Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF CENTURYTEL, INC.

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Summary

CenturyTel supports change that will simplify and rationalize inter-carrier compensation in a manner that will provide the greatest potential benefit with the least likely harm to consumers. The array of plans filed in this proceeding and their various approaches to reform, demonstrate there are numerous steps that the Commission can take to improve the current compensation framework.

Of paramount importance, the Commission should acknowledge that three meaningful revenue streams – inter-carrier compensation, universal service support, and end-user rates – are necessary for implementing reform that benefits consumers and carriers, without disadvantaging one more than the other. Any inter-carrier compensation changes must be revenue-neutral to incumbent local exchange carriers (ILECs) in order for them to continue to serve as carriers-of-last-resort (COLRs) and attract capital for rural telecom investment. ILECs provide critical telecommunications infrastructure essential to the economy, national security and public safety. Over-reliance on end-user rates and universal service support is untenable for carriers facing an increasingly competitive environment.

To date, the debate over inter-carrier compensation has been dominated by the concerns of carriers. To the extent that reform is needed, however, much greater attention should be paid to the impact of the proposed reforms on consumers, who are least represented in this proceeding. Some of the most dramatic impacts of the proposed reforms will affect those consumers who are most vulnerable: residential and small business users in rural America. CenturyTel knows of no proposal that was developed with significant consumer representation.

CenturyTel is particularly concerned about the casual way in which some plans propose to systematically increase end-user telephone rates. Most of the proposals in this docket

include a sizable end-user rate increase – whether it is called a federal "subscriber line charge" (SLC) or "end-user common line" (EUCL) charge, or some new type of charge, *it is the end-user who will pay it*. While these plans may assume that decreased inter-carrier payments will result in some cost savings to consumers, none of the plans ensure that lower inter-carrier payments actually will be passed through to consumers in the form of lower monthly end-user bills. CenturyTel encourages the Commission to stand in the gap to ensure all customers achieve a better value proposition in terms of price, calling scope, and availability of advanced communications services, as a result of this reform process. Higher SLCs, higher local rates, and higher universal service charges all will affect affordability in a meaningful way, but the Commission has not yet determined the impact of these expected changes.

CenturyTel believes that most of the proposals pose a threat to consumer welfare and to the ubiquity of our national telecommunications infrastructure. We have quantified the consumer impact and financial implications of several of the proposed plans and determined the following:

- The terminating access rate structure under the ICF plan would require CenturyTel to recover 86 percent of its current access revenues from a combination of end-user rate increases and new federal support funding.

- The rate structure advocated by NARUC would require CenturyTel to recover 78 percent of shifted access revenues from end users and federal funding.

- If bill and keep were adopted and access charges eliminated, CenturyTel would have to recover charges ranging from \$6 to \$50 per line per month or, on average, an additional \$14 per line per month from its end users or support funds.

- Increasing the residential SLC from \$6.50 to \$9.00 for rural carriers as advocated in the ICF plan represents a 12 percent rate increase on average for CenturyTel residential customers (using CenturyTel's average residential rate plus the current \$6.50 SLC as the starting point). Increasing the SLC to \$10.00 represents a 16.7 percent rate increase in residential end user rates.

A number of meaningful reforms nevertheless could be achieved immediately that would produce needed benefits, without increased risk to consumers. There are many issues the FCC can address now that will help relieve some of the arbitrage and financial imbalances in the system. In particular, the Commission should:

- Enforce truth-in-labeling on all inter-network and inter-carrier traffic. This will enable recipients of such traffic to bill the appropriate party for terminating traffic originating on another network, and end the problem of "phantom traffic."
- Act immediately to establish a competitively neutral contribution methodology for all federal support mechanisms going forward.
- Clarify that entities that are not "carriers" under a meaningful standard have neither interconnection rights nor the right to require legitimate carriers to send them traffic or make §251(b)(5) payments.
- Re-size and uncap the rural high-cost fund so that carriers receive support in amounts that are sufficient and predictable, and better reflect the cost characteristics of serving consumers in high cost areas.
- Adopt incentive regulation plans for mid-size and rural rate-of-return carriers.
- Continue to scrutinize the level of universal service support received by competitive eligible telecommunications carriers (CETCs) and ensure that states adopt more stringent criteria in approving a CETC for universal service support.

These represent just a sampling of the immediate reforms that CenturyTel advocates throughout these Comments to mend, not completely dismantle, the current compensation system as broader reform is contemplated.

CenturyTel also identifies the best aspects of the plans that have been proposed, and the shortcomings of the prevailing plans. In particular, CenturyTel applauds several proposals that acknowledge the unique challenges associated with bringing high-quality, advanced services to Americans in rural areas. Specifically:

- CenturyTel supports the rural network architecture and interconnection responsibilities and the concept of default rates as proposed in the ICF plan.

- CenturyTel supports the notion of maintaining three meaningful revenue streams for ILECs. To CenturyTel, this means that no more than 50 percent of its existing access revenues should be shifted to a combination of access replacement funds and end-user rates through a SLC increase.

- We advocate that the monthly per line SLC charge be permitted to increases by no more than $1.50 for rural residential subscribers.

- CenturyTel supports the development of a unified rate structure, including the concept of rate banding by study area. The unified structure should account for the unique cost characteristics of any given study area.

- While we take no position on the elimination of originating access charges, we point out that the rate structure for rural carriers currently advocated by the ICF is inadequate. In a compensation system where originating access is retained, we agree with the Rural Alliance unified access rate proposal.

- We support the enhanced universal service aspects of the ICF plan.

- We support the notion of allowing carriers to freeze their high-cost support following a resizing of the high-cost fund as advanced in the Frontier plan.

- CenturyTel agrees with the Rural Alliance and NARUC plans pertaining to the proper labeling of traffic and the ability to block traffic that is not properly identified.

- CenturyTel agrees that equal access requirements for all carriers should be abolished.

- Like the Rural Alliance, CenturyTel is concerned that compensation arrangements must be developed for IP-to-IP traffic.

- CenturyTel believes the transition timetable outlined in the ICF plan represents a reasonable schedule in which to move towards a new inter-carrier compensation framework.

- We agree in principle with the Rural Alliance, USTA, and ICF that any reform should strive for revenue neutrality through the transition.

CenturyTel is concerned that many of the proposed plans fail to achieve competitive neutrality, but instead attempt to reward competitors by making federal support available to them without imposing on these entities the same obligations that apply to ILECs. None of the plans adequately addresses the fundamental differences between the ILEC and all other carriers, in that the ILEC is the COLR. In an increasingly competitive marketplace, it is the ILEC that must serve every customer at regulated rates whether or not it is profitable to do so. ILECs also are uniquely required to make available to their competitors their most valuable asset – the ubiquitous network – without any guarantee that network providers will receive proper compensation for use of the network. Moreover, none of the pending proposals anticipates unintended new arbitrage opportunities that could generate substantial new costs for network operators such as CenturyTel without conferring any net benefit to the public. In this environment, ILECs are understandably skeptical about proposals to shift massive amounts of their revenue recovery from rates to a federal support mechanism that is both subject to the vicissitudes of politics and potentially offered to competitors without comparable obligations. Inter-carrier compensation reform is about more than just payments between carriers. It is about ensuring an acceptable level of certainty regarding ubiquitous affordable access to communications service for urban and rural communities, whose long-term economic outlook depends in large part on investment in telecommunications networks, and the availability of advanced technologies.

The U.S. has achieved telephone subscribership levels that are the envy of much of the world thanks to universal service policies. However, U.S. is not in the vanguard when it comes to advanced services, and we stand at risk of falling behind even further at a critical time in this nation's economic development. In trying to adjust the current inter-carrier rules for a competitive market and new technologies, the Commission should not inadvertently jettison network investment incentives by embracing bill and keep proposals or adopting artificially low compensation rates as a replacement for access charges. The Commission should strive to strike a balanced compensation plan that does not harm consumers or disproportionately burden any class of carriers.

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COMMENTS OF CENTURYTEL, INC.

I. INTRODUCTION

A. Affordable, Ubiquitous Service Is The Prime Directive

The central mandate of the Communications Act – its prime directive – is to ensure universal availability of advanced telecommunications capability to all Americans at affordable and reasonably comparable rates.[1] This mission is superior to all other goals, and anything the Commission achieves in this proceeding must be deemed a failure unless achieved in a manner consistent with and supportive of this overarching goal.

The concept of a unified, national scheme for inter-carrier interconnection and compensation has inherent appeal, but also carries a number of price tags and substantial risk. The most important price tag the Commission should evaluate is the one for consumers. A "subscriber line charge" (SLC) – the most prominently discussed vehicle to replace inter-carrier compensation – is a charge the consumer pays and, therefore, *a SLC increase is a consumer rate hike*. Can the American consumer get reasonable assurance that they will get greater value as a result of this shift in policy, without sacrificing quality, reliability or ubiquity of the services upon which they rely? Or will the benefits of a new inter-carrier compensation regime flow mostly to a subset of service providers, while most consumers experience increased prices,

[1] 47 U.S.C. §§ 151, 254.

declining service quality, or fewer choices? It is critical that the Commission put itself in the shoes of the consumer.

There has been a great deal of concern expressed about promoting competition, encouraging the deployment of new technologies, and lowering prices in certain segments of the telecommunications market – all laudable goals, but only legally permissible goals if they are achieved without sacrificing the prime directive. Indeed, rural consumers are especially vulnerable to the unintended consequences of telecommunications policies. As explained by Commissioner Copps:

> As we move forward on all of our proceedings, including, among others, universal service decisions, broad band policy, access charge reform, and intercarrier compensation, we just must do everything we can to make certain that we understand the full impact of our decisions on rural America. If we get it wrong on these rural issues, we will consign a lot of Americans to second-class citizenship.[2]

No individual rule change, and no major policy shift, should be adopted unless it serves the prime directive.

B. CenturyTel Is An Advocate for Rational Inter-Carrier Rules

CenturyTel provides local exchange, long-distance, dial-up and dedicated broadband Internet access, information services, and wireless services predominantly to rural customers in its 22 state ILEC region. In addition, through its LightCore and KMC acquisitions, CenturyTel is building a competitive local exchange and long-haul business in 24 states. CenturyTel has been at the forefront among ILECs in implementing network advancements such as DSL deployment, negotiating wholesale relationships with other carriers on market-driven terms, acquiring exchanges from larger carriers and improving them, identifying opportunities to

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[2] Statement of Michael J. Copps, Commissioner, Federal Communications Commission, before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, Feb. 26, 2003, at 4.

enter new retail markets, and identifying disparities in current regulations that inhibit competition. CenturyTel's commitment to investment and service of the highest quality in its rural markets is second to none.

CenturyTel has long advocated reform of the FCC's rules governing inter-carrier compensation, competition and universal service, and CenturyTel was the first rural LEC invited to join the Inter-Carrier Compensation Forum (ICF). CenturyTel participated in ICF discussions for over a year, as well as in other groups discussing inter-carrier interconnection and compensation, including EPG,[3] United States Telecom Association (USTA), the National Exchange Carrier Association (NECA), and the fora sponsored by the National Association of Regulatory Utility Commissioners (NARUC). CenturyTel's comments thus are based on considerable experience with the issues raised by the *Further Notice*.

Having devoted significant resources to evaluating the full range of inter-carrier compensation reform proposals over the years, CenturyTel is convinced that inter-carrier compensation, interconnection and access issues, universal service support policies, and other competition policies such as equal access, all must be considered in light of the others. The Commission cannot change any of its rules in these areas without affecting the other areas. At the same time, technology is rapidly changing the nature of networks and the ways carriers exchange traffic and interconnect. CenturyTel advocates incremental change, judiciously implemented to ensure that consumers are not harmed as a result of the changes adopted in this proceeding.

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[3] EPG Comprehensive Plan for Intercarrier Compensation Reform, Nov. 2. 2004 ("EPG Proposal"), attached to Letter from Glenn H. Brown to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004).

II. THE COMMISSION CAN ADDRESS IMMEDIATELY MANY OF THE ISSUES TARGETED BY THE *FURTHER NOTICE* WHILE SERVING THE PRIME DIRECTIVE

CenturyTel advocates an approach whereby the Commission acts now to address issues within its grasp, before implementing some of the more far-reaching proposals that are before it. As explained in Section III, below, CenturyTel unequivocally opposes replacing inter-carrier compensation with a "bill and keep" regime. However, there is plenty of positive change that can and should be implemented in this proceeding. CenturyTel believes that the Commission has not always acted swiftly enough, or with sufficient clarity, to guide carriers in their mutual obligations and financial responsibilities. This lack of clarity and enforcement has produced significant problems in the industry, and should be remedied without delay.

Some of the worst abuses of the current rules include the use of "virtual NXX" codes by some carriers to dodge jurisdictionally appropriate inter-carrier charges, or to avoid investing in local facilities to serve smaller markets. Some of these practices have grown out of ambiguity in the Commission's previous decisions on interconnection and inter-carrier compensation.[4] Although the proposition now seems self-evident, it took the Commission nearly nine years after first adopting local interconnection rules to clarify that the obligations under Sections 251 and 252 of the Act to negotiate in good faith for reciprocal arrangements to

[4] A number of competitive local exchange carriers (CLECs) have attempted to use "Virtual NXX" codes to disguise inter-exchange traffic as local and thereby avoid access charges. *See* Letter from Karen Brinkmann, Counsel to CenturyTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-98, 99-68 and 01-92 (filed Feb. 1, 2005) (discussing abuses of VNXX arrangements and substantial harm to CenturyTel caused by such abuse); Letter from Karen Brinkmann, Counsel to CenturyTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 96-98, 99-68 and 01-92 (filed Jan. 27, 2005) (same); Letter from Karen Brinkmann, Counsel to CenturyTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, Docket Nos. 96-98, 99-68, 01-92, and 04-36 (filed Nov. 10, 2004) (same).

terminate traffic on another carrier's network applies to commercial mobile radio service (CMRS) carriers, and not just to other providers of local exchange service (wireline-based ILECs and CLECs).[5] The Commission still has not clarified who bears the financial burden for transporting traffic to and from a point of interconnection outside an ILEC's service territory when a CMRS carrier indirectly interconnects with an ILEC.[6]

Still other problems that plague the industry are the result of the Commission's decision *not* to enforce some rules that *are* clear. Put simply, carriers can "help themselves" to other carriers' networks without paying the inter-carrier charges they owe today because the FCC historically declined to exercise jurisdiction over inter-carrier disputes. "Phantom traffic" is one of the fastest growing problems facing the industry. It increases the ILECs' costs, as they are forced to invest in additional facilities to avoid network congestion affecting their legitimate customers. They incur expenses, too, in trying to determine the source of this traffic so they can impose appropriate termination charges. While the obligation to pay for interconnection is clearly mandated under both interconnection and access charge rules, the Commission has for the most part declined to adjudicate disputes over such charges, and suggested that carriers take the more burdensome route of filing lawsuits in federal district court to collect what is owed them under the Communications Act.[7] The costs of policing this traffic, and trying to collect amounts

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[5] *Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* CC Docket No. 01-92, FCC 05-42 , at para. 16 (rel. Feb. 24, 2005).

[6] *See* Sprint Petition for Declaratory Ruling regarding the routing and rating of traffic by ILECs, CC Docket 01-92 (Public Notice DA 02-1740, rel. Jul. 18, 2002).

[7] CenturyTel believes the FCC has jurisdiction under Section 208 of the Communications Act to enforce both its existing rules and any new inter-carrier compensation rules. However, in recent decisions, the Commission has directed carriers to take disputes over non-payment of federally authorized charges to federal district courts, rather than the FCC. *U.S. TelePacific Corporation,* File No. EB-04-MD-005, Memorandum Opinion and Order,

lawfully assessed, place ever-increasing burdens on the carriers who do play by the rules, and reward scofflaws. Clear rules, consistently enforced, ultimately will eliminate disputes and allow the industry to move on with the business of providing service to the public.

Similarly, the rules governing contributions to federal support programs are not uniformly enforced, and are not competitively neutral. Some carriers such as CenturyTel pay on 100 percent of their interstate telecommunications revenues while others pay on only a portion or are entirely exempt.[8] Putting aside whether some entities today merely ignore their obligations,[9] under any new contribution methodology, the contribution obligation must attach to each provider according to the type of service purchased by its end-user. Comparable assessments

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FCC 04-284, at para. 8 (rel. Dec. 14, 2004); *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket no. 02-361, FCC 04-97, at n.93 (rel. Apr. 21, 2004); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, FCC 05-41, at n.58 (rel. Feb. 23, 2005) ("*AT&T Calling Card Order*"). The federal court remedy is inefficient, potentially requiring carriers to file suits over the same charges in many different courts. In addition, this approach can be expected to produce a body of decisions that vary from one court to the next. A uniform process at the FCC would be far a more efficient use of carrier and government resources.

[8] Specifically, cable modem service providers and voice over internet protocol (VOIP) telephony providers pay no contributions today, and CMRS carriers pay on a fraction of their interstate telecommunications revenues. *Federal State Board On Universal Service,* 17 FCC Rcd 24952 (2002) (permitting wireless carriers to pay universal service based on an assumption that 28.5 percent of their traffic is interstate); *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004) (noting that the Commission has yet to determine if universal service fund contribution obligations will apply to VOIP services); *IP Enabled Services,* Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (rel. Mar. 10, 2004) (same and also questioning whether universal service may be applied to cable modem services).

[9] Letter from Christopher M. Heiman, General Attorney for SBC Communications, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-133 (filed Jul. 30, 2004) (discussing AT&T's decision to cease paying access charges on its calling card traffic without FCC approval); *AT&T Calling Card Order* at para. 15 (denying AT&T's petition for Declaratory Ruling that it need not pay access charges on its calling card services, finding that AT&T did not provide "the 'capability' to do anything other than make a telephone call").

should attach for comparable end-user services. In this way, no contributor will be competitively harmed. Again, the rules need to be clearly articulated and aggressively enforced.

The purpose of this proceeding therefore should be to bring as much clarity as possible so the market can function and services will be available when and where consumers need them. Inter-carrier compensation should be modified in a series of steps over a reasonable transition period, such as eight years. There are a number of steps that CenturyTel believes should be undertaken now, to protect consumers and preserve universal service as reform moves forward.

First, CenturyTel agrees with the aspect of the EPG Plan that recognizes that disputes related to "phantom traffic" deserve immediate attention.[10] In its plan, EPG seeks to eliminate the "phantom traffic" problem by implementing "truth in labeling" guidelines to ensure that transiting carriers provide the terminating carrier sufficient information to bill the proper party for use of the terminating carrier's network.[11] The Commission should require and enforce truth-in-labeling on all inter-network and inter-carrier traffic, enabling recipients of such traffic to bill the proper party for terminating traffic originating on another network. Further, as proposed by ARIC[12] and NARUC[13] the Commission's truth-in-labeling rules should specify that traffic that is not properly labeled may be blocked.

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[10] EPG Proposal at 15-18; *see Further Notice* at para. 133.

[11] EPG Proposal at 15-18.

[12] Alliance for Rational Intercarrier Compensation (ARIC) – Fair Affordable Comprehensive Telecommunications Solution (FACTS) at 55 ("ARIC Plan"), attached to Letter from Wendy Thompson Fast, President, Consolidated Companies and Ken Pfister, Great Plains Communications to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, 96-45, 04-36, 99-68, and 96-98 (filed October 25, 2004) (proposing a system in which "the tandem operator then would be in a position to cease switching and routing of this traffic if the abusing carrier does not rectify the situation").

Second, the Commission should clarify that entities that are not "telecommunications carriers" under the standard established in Section 3 of the Communications Act have neither interconnection rights nor the right to receive reciprocal compensation from legitimate carriers. For example, an ISP should not be permitted to set up a sham CLEC affiliate simply to collect termination charges for the end-user ISP.[14] This arrangement merely shifts the costs of the so-called CLEC's business to the originating carriers. Further, alternative service providers, such as providers of VOIP services, should not be granted rights to interconnect as a "carrier" unless they also accept the public service obligations that accompany "common carrier" status.

Third, the Commission should take steps to shore up universal service by establishing a competitively neutral (and technology neutral) contribution methodology for all federal support mechanisms going forward.

Fourth, the Commission should re-size and uncap the rural high-cost fund so that carriers receive support in amounts that are sufficient and predictable, and better reflect the assumptions that underlie current rates. These Comments discuss in detail the need for specific, predictable and sufficient support.[15]

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[13] Robert B. Nelson, Commissioner, Michigan Public Service Commission, et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, Appendix C (May 18, 2005) ("May 18 NARUC Proposal").

[14] A number of CLECs have attempted to use "Virtual NXX" codes to disguise inter-exchange traffic as local and thereby avoid access charges. *See supra* note 4 (citing CenturyTel *ex parte* letters to the Commission discussing Virtual NXX abuses).

[15] *See infra* Section III.C.2.b.

Fifth, the Commission should further amend the "safety valve" mechanism to provide incentives for investment in acquired lines.[16] CenturyTel supports the proposed safety valve changes proposed in the ICF Plan, to provide additional support for non-loop related expenditures in acquired exchanges.[17]

In sum, CenturyTel advocates a "best in class" approach, taking those proposals of value from the record, while avoiding more draconian suggestions that have not yet been tested. The Commission should move forward and address the problems that are well understood and represent a prime opportunity for a ready solution.

III. THE PROPOSED PLANS MUST BE EVALUATED FOR THEIR EFFECTS ON CONSUMERS AND INVESTMENT INCENTIVES IN RURAL AMERICA

In considering the economic impact of any plan for inter-carrier compensation reform, the Commission must weigh both the direct impact on consumers, through end-user rate increases, as well as the indirect consumer impact, for example, through changes in prices of vertical services, availability of service, and choice among providers. The record indicates that the elimination of inter-carrier compensation could shift as much as *$9 billion per year* in charges that, ultimately, would be paid by end-users.**[18]** CenturyTel hopes the impact on end-

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[16] The FCC recently acknowledged and addressed this issue, at least in part. *Federal State Joint Board on Universal Service, National Telephone Cooperative Association Petition for Reconsideration*, Order and Order on Reconsideration, CC Docket No. 96-45, FCC 05-1 (rel. Jan. 10, 2005).

[17] Regulatory Reform Proposal of the Intercarrier Compensation Forum, at 23, October 5, 2005 ("ICF Plan"), attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the ICF, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Tab A (filed, Oct. 5, 2004).

[18] Letter from Richard R. Cameron to Marlene H. Dortch, Secretary, CC Docket No. 01-92 (Dec. 14, 2004) ("ICF December 14th Ex Parte") (adding approximately $6.34 billion in estimated SLC increase and approximately $2.67 in TNRM/ICRM Support). This represents the estimated total revenue shift to end-users through a combination of direct rate (SLC) increases and universal service contributions, which are passed through to

users will be the Commission's paramount concern in weighing all the options in this proceeding.

CenturyTel supports inter-carrier compensation reform to the extent that it is likely to reduce disputes between carriers, make customers' bills easier to understand, and eliminate arbitrage. Reform of the magnitude being considered by the Commission, however, has the potential to cause mischief in a number of respects. Some of the suggestions put before the Commission in recent *ex partes* threaten the foundation of our national telecommunications infrastructure. CenturyTel therefore advocates a "best in class" approach in this proceeding. Below we highlight those aspects of the pending proposals that CenturyTel supports, as well as some of the economic concerns raised by the proposals before the Commission. In particular, we discuss the public harm that will come from excessive end-user charges, the benefits and detriments of the proposed rate structures, and the need for revenue-neutrality during the transition to new rates.

A. Increases In the SLC Cap Must Be Limited To Avoid Harming End-Users

It is difficult to perceive the consumer benefit in the plans that have been presented to the Commission in this docket. None of the proponents of a bill-and-keep compensation framework have demonstrated that consumer rates will decrease as a result of reductions in carrier access charges and reciprocal compensation payments. In fact, it is doubtful that reductions in inter-carrier compensation payments will be passed through to consumers to counter-balance the proposed increased in the SLC cap. Inter-exchange carriers have not been

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end-users by the carriers who must pay them. CenturyTel notes that the Commission has proposed, and many members of the ICF have supported, changing the contribution methodology from one that is usage-sensitive (based on interstate telecommunications revenues, therefore reflecting usage to a great extent) to a flat-rated mechanism that will treat each residential end-user alike regardless of usage. Like the proposed shift from inter-carrier compensation to increased SLCs, this is a regressive charge, affecting most those consumers who can least afford the increase.

required to pass previous reductions in interstate access charges to end-users; even if they were required to do so, as non-dominant carriers they have near-total pricing flexibility and can be expected to target any rate reductions to their most valued customers, who generally are not rural residential consumers.[19] Thus, the average consumer may well pay *more* for basic service, while only the customers with the heaviest usage experience a net benefit from the change from usage-sensitive access charges to a higher SLC. As described further below, such a rate increase will disproportionately harm rural consumers.

When a customer reviews a bill for telephone service, the customer does not separately consider the charges for "local" service, for "intraLATA toll," for "interLATA toll" and for "interstate access." Today's customer evaluates the total bill, including all the taxes, surcharges, and other "add-ons" that federal, state and local governments have forced carriers to itemize on the bill. The customer writes just one check for the total bill. There is no question that the customer considers the SLC part of this total telephone bill. Indeed, the Western Wireless Proposal would require carriers to include the SLC as part of the basic price of service on the customer bill.[20] While CenturyTel does not endorse eliminating the option of a line item for the SLC, in CenturyTel's experience, most customers would rather not even see a separate line item for the SLC at this time, since they do not understand what service it represents. The customer does not think about the costs of running the network and the costs of carriers

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[19] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, 11 FCC Rcd 20730 (1996) (eliminating the requirement that inter-exchange carriers file tariffs pursuant to Section 203); *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier* , 11 FCC Rcd 3271 (1995) (declaring AT&T to be a non-dominant carrier).

[20] Western Wireless Intercarrier Compensation Reform Plan at 14 (filed December 1, 2004) ("Western Wireless Proposal"), attached to Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Dec. 1, 2004).

interconnecting with each other – and the customer should have no reason to do so. All the customer should have to know is that dial tone is available when the customer wants it, and the customer can call anyone and receive calls from anyone the customer chooses. The customer does not consider the SLC as anything other than an additional cost impacting the bottom line.

Several parties have submitted estimates of the economic impact of the proposed inter-carrier compensation reform in the range of $9 billion per year. [21] The ICF proposes that end-users should bear roughly 66 percent of that shift, or about $6 billion, in direct rate increases. Under the ICF plan, the SLC cap – the cap on what end-users pay under interstate access rules – would be raised to as high as $10 for all residential consumers,[22] and $10 for multi-line business customers, over a four or five-year period.[23] CenturyTel's modeling of the ICF proposal shows that, with a residential SLC of $10, our customers, on average, would see approximately a 16.7 percent direct rate increase. About 75 percent of CenturyTel's customers are residential – a much higher percentage than the typical non-CRTC ILEC, and far in excess of the typical CLEC's proportion of residential customers. Today CenturyTel's residential customers pay on average about $21.00 per month for their primary residential line (including the current SLC of $6.50). Thus, the proposed SLC increase would drive CenturyTel end-user rates up by more than 16 percent, on average, *regardless of usage*.

Under the current interstate access rules, end-users pay for a portion of the cost of access to the local network on a fixed basis, through the interstate SLC, but then pay for the

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[21] *See* ICF December 14th Ex Parte.

[22] The $10 SLC automatically would apply in non-CRTC areas, while in CRTC areas the SLC cap would be $9 with an optional increase to $10. *See* ICF Plan at 63.

[23] For non-CRTCs, the SLC cap for all services would be $10 at the end of four years, in Step 5 of the plan; for CRTCs, the residential SLC cap would increase in $0.50 increments until it reaches $9.00, which for all of CenturyTel's markets would occur in five years, and the multi-line business SLC would be capped at $10 in four years. *See Id.* at 60-63.

remaining portion of the interstate allocation of those costs on a usage-sensitive basis, through long distance toll charges. State rates vary widely, but are structured in a similar manner in most cases. Customers who make a lot of long-distance calls thus pay more than customers who make fewer. It should be expected that the proposed new rate structure will most benefit those consumers who currently incur more long-distance charges (and access charges) because they use the network more (assuming such reductions are passed through to consumers in retail rates). Conversely, customers who do not make as many long-distance calls will pay more for the same network access they get today, but gain nothing.

In rural areas, where telecommunications service is most critical to the economic and social fabric of society, customers have lower average incomes and fewer assets, translating into fewer disposable dollars for telecommunications services. In recent years, rural incomes also have been declining faster than incomes in urban areas. According to USDA research, CenturyTel serves some of the poorest rural communities in the nation in the states of Alabama, Arizona, Arkansas, Louisiana, New Mexico, Mississippi, and Missouri.[24] CenturyTel's marketing research found that, while 41 percent of households in the United States earn an income of $60,000 or higher, only 27 percent of households meet or exceed that income level in rural markets. Further, 62 percent of individuals in metropolitan markets have some college education, but in rural areas, only 43 percent have attended college.

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[24] *See* Economic Research Service (USDA), Rural Income, Poverty, and Welfare: High-Poverty Counties, available at http://www.ers.usda.gov/briefing/incomepovertywelfare/highpoverty, visited May 21, 2005.

The differing customer base in rural areas compared to non-rural areas has a profound effect on the economics of competition.[25] In rural areas in particular, consumers may be more likely to seek out lower-cost, lower-quality alternatives, such as wireless and VOIP,[26] or drop off the network altogether. Further it is not clear that consumers are fully aware of the drawbacks of alternatives to traditional wireline telephony, such as potential lack of service during power outages, lack of automatic location information when dialing 911, and, with most VOIP services, the inability to reach emergency service providers at all through three-digit 911 dialing.[27] Thus, those customers who are most in need of reliable, affordable, high-quality

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[25] The Rural Task Force described the implications of the different market characteristics faced by rural carriers as follows:

> Most Rural Carriers serve primarily residential and very small business customers. Rarely are there large business customers present in rural areas. In instances where a large business customer is present, that single customer can account for disproportionate share of the Rural Carrier's business. Competitive loss of that single customer could have a severe detrimental impact on the Rural Carrier's business and the rates of remaining customers.

Rural Task Force, *The Rural Difference*, White Paper 2, Jan. 2000, at 30.

[26] The FCC has acknowledged that higher prices for basic telephone service may drive customers to a less ubiquitous, less robust, and less reliable service such as CMRS or VOIP service. *Further Notice* at paras. 20-21 (noting that the method by which different types of service providers recover their costs can have an affect on which type of service the customer chooses).

[27] Edie Herman, *Victims of 911 Glitches, Safety Officers Expected to Attend VOIP Meeting,* COMMUNICATIONS DAILY (May 19, 2005 (reporting on people who were seriously harmed by when they unsuccessfully tried to reach 911 emergency services using their VOIP service); John M. Moran, *State Suing VoIP Provider Over Disclosure*, THE HARTFORD COURANT, May 4, 2005 (describing state suit against Vonage for failing to adequately inform customers that their 911 calls might get sent to a non-emergency number or even a recorded message instead of a live dispatcher); Sam Diaz, *Who answers 911: Technologies like cell phones and VOIP put emergency responders to the test*, SAN JOSE MERCURY NEWS (May 2, 2005) (noting that "it's anyone's guess where a cell phone call to 911 will end up – or how long it will take for a dispatcher to answer").

telecommunications services for participation in economic, civic, and educational life, are most likely to be harmed by the proposed SLC cap increase.

Increasing the SLC cap also is likely to create a pricing gap between markets served by rural and non-rural carriers. Non-rural carriers generally enjoy economies of scale and scope not shared by rural ILECs, enabling the non-rural carriers to average their costs across a much larger customer base, and absorb cost differences that would be significant to smaller rural carriers on a per-line basis. Therefore, most non-rural carriers have exercised the pricing flexibility they enjoy today and in many markets are able to price their SLCs below the current caps. Rural carriers are likely to face far more significant revenue shifts as a result of this inter-carrier compensation reform proceeding than their non-rural counterparts. For both of these reasons, CenturyTel expects that in many markets the non-rural ILECs will not raise their SLCs to the new cap adopted in this proceeding, while most rural carriers will be forced to do so (assuming any new federal support will be calculated as if carriers have priced SLCs at the cap). Nevertheless, those non-rural carriers who have SLCs below the cap today, and less likely than their rural counterparts to raise SLCs to the new cap, probably will not be required to contribute more to the federal support mechanism despite their greater ability to pay. Rather, they will enjoy a pricing advantage over neighboring rural ILECs. Rural carriers such as CenturyTel find themselves competing for customers with non-rural carriers such as BellSouth, Qwest, SBC and Verizon in adjacent markets. Thus, the pricing gap described here would create a competitive disparity that we believe will distort the market. Therefore, CenturyTel advocates requiring all carriers to price the SLC at the cap or contribute the difference to the new support fund.

Because the Commission may not adopt a rule change that disserves the public interest, it must determine who stands to benefit from such a massive shift in telecommunications economics. These comments demonstrate that an increased SLC is not going to materially benefit most consumers, and likely would harm a good many of the most vulnerable consumers. CenturyTel urges the Commission, therefore, to permit no more than a $1.50 increase in the monthly per-line SLC for residential consumers in areas served by rural carriers such as CenturyTel. CenturyTel fears that the beneficiaries of an increased SLC and lower inter-carrier charges will be large carriers with nationwide footprints and the niche carriers seeking to profit from arbitrage schemes. To the extent that end-users see any benefits, it is the largest customers who stand to benefit the most from any potential price reductions.[28] Based on such a record, CenturyTel does not believe the FCC can find that the public interest would be served by the significant SLC increase generated by a zero-based "bill and keep" plan or other plans proposed in this docket.

B. "Bill-and-Keep" Is Inconsistent With Revenue Neutrality

In light of the prime directive that affordable and comparable service should be assured for all Americans, the Commission must ensure that this proceeding makes only those changes that are revenue-neutral to the "carrier-of-last-resort" (COLR), the ILEC.[29] There are serious consequences to shifting cost recovery for these carriers to the end-user or a combination

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[28] This is reminiscent of the effect of CLEC entry that was stimulated by the Commission's Unbundled Network Elements (UNE) rules. It has been widely acknowledged that UNE-based CLECs have brought price competition to large business customers in the densest markets, but had little effect on smaller markets or the choices available to the average consumer. *See, e.g.,* Report to the 78th Texas Legislature, "Scope of Competition in Telecommunications Markets in Texas," Public Utility Commission of Texas (Jan. 2003) at 24-25, 28-29.

[29] The ILEC is always the COLR except for a very small number of customers in isolated rural communities where CLECs have taken over COLR responsibilities, and only with the help of significant federal universal service support. *See e.g.*, *Sandwich Isles Communications, Inc. Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, FCC 05-1355 (rel. May 16, 2005) (granting Sandwich Isles petition to be treated as the ILEC for universal service purposes).

of end-users and support mechanisms. Making the ILEC networks available for no charge or below cost to other carriers and Internet service providers (ISPs) will discourage deployment of alternative network facilities and stimulate usage of the ILECs' networks, increasing ILECs' costs without any reasonable assurance that those costs will be recovered. In a competitive environment, all three cost-recovery mechanisms – end-user rates, universal service and inter-carrier compensation – must remain available in meaningful proportions. Shifting too much of the costs to end-users is contrary to statutory goals, as described above. Requiring ILECs to recover too great a share of their costs from a support mechanism subject to a host of political and economic pressures will make it difficult for ILECs to attract investment in the future. Therefore, a substantial amount of cost-recovery – at least 50 percent of amounts currently being recovered – must continue to be recoverable from inter-carrier charges.

1. Revenue Neutrality Is Essential To Ensuring Any Rule Changes Will Serve the Public Interest As Mandated By the Communications Act

In the past, there was a "social compact" between ILEC investors and the public: The ILEC would serve all users on request, regardless of profitability, and the earnings potential of investors would be limited; in exchange, the COLR received a unique franchise and a reasonable opportunity to recover its cost of capital at the predictable and relatively stable authorized rate of return. The growth of competition altered the latter half of the compact – competition is present in every sector of the market, and many carriers are regulated not based on earnings but only on price. However, carriers like CenturyTel still have COLR obligations.

In adopting rule changes the Commission must act rationally, given the legal precedent and known facts. It is known that current revenue streams have allowed ILECs to build, maintain and operate networks and provide high-quality, advanced services in most rural areas as the COLR for all customers. There is no basis to conclude that anything less than the current revenue requirements are necessary to ensure continued investment in and maintenance of high-cost networks. It would be reckless to assume that incentives for continued investment and operation would be sufficient if that revenue stream were diminished under a non-revenue-neutral plan, particularly at a time when rural consumers are demanding broadband deployment.

The Communications Act expresses the choice of this society to have ubiquitous, affordable service notwithstanding the desire for competitive alternatives. The Act does not require, however, that investors fund operations in markets where there is no reasonable opportunity to earn a fair return on investment. ILECs are being asked to guarantee affordable, ubiquitous service, including advanced telecommunications capability, even though they have no guarantee they will be able to earn a reasonable return in an increasingly competitive market. Investors require a business model that includes manageable transitions and opportunities for recovery of their investment, including a reasonable return. If the Commission believes that every customer should have access to a COLR for service on request, then the Commission should adopt a sustainable pricing scheme and a revenue-neutral transition that will not unduly shift the burden of reform onto consumers.[30]

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[30] The ICF Plan includes revenue neutrality for CRTCs as a fundamental principle because of the unique concern expressed in the Act for the preservation and advancement of universal service. ICF Plan at 73 (discussing availability of a transitional recovery mechanism to all CRTCs and certain CETCs to replace lost switched access revenue). The ICF Plan recognizes the unique challenges faced in areas served by CRTCs and establishes revenue neutrality to ensure the plan satisfies the FCC's statutory obligations. ICF Plan at 69-74; *see Further Notice* at para. 99.

2. Making ILEC Networks Available To Other Carriers At No Cost or Below Cost Will Not Be Revenue-Neutral, But Will Shift Costs to End-Users and Discourage Investment In High-Cost Markets

The Commission has proposed, and various parties have supported, making ILEC networks available to other carriers at no cost (under bill-and-keep) or at below-cost rates.[31] The Commission posits that this dramatic policy change is justified because (a) customers on the receiving end of a call stand to benefit equally with the calling party, and can control whether they receive or do not receive any particular call just as easily as the calling party controls whether to make the call;[32] (b) confusing distinctions between different types of traffic will be eliminated, reducing the cost of enforcement;[33] and (c) changes in telecommunications infrastructure and the marketplace "call into question" the practice of usage-sensitive pricing, which the Commission says "distorts the competitive process."[34] The Commission reasons that the cost to a carrier of exchanging any single call with any other carrier is *de minimis*, and therefore there should be no significant transfer of costs or compensation between networks.[35]

CenturyTel questions each of the Commission's premises as well as its conclusion. CenturyTel believes that a policy that encourages use of another carrier's facilities

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[31] *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 at para. 4 (2001) ("*Initial Notice*"); ICF Plan at 6-7; Western Wireless Proposal at 6.

[32] *See Further Notice* at paras. 17 & 25-26 (customers "generally will benefit from calls they choose to accept" so "customers should bear the cost of the network of their choosing and avoid the cost of the networks rejected").

[33] *See id.* at para. 15 ("regulatory arbitrage arises from different rates that different types of providers must pay for essentially the same functions"), para. 22 ("[t]echnological alternatives to [plain, old telephone service] that are not tied to a geographic location, such as wireless services and some IP-based services, make regulatory distinctions based on jurisdiction difficult to enforce").

[34] *See id.* at paras. 16 & 23-24 ("most network costs, including switching costs, result from connections to the network rather than usage of the network itself").

[35] *See, e.g., Further Notice* at paras. 23, 67-68 & n.77.

without fair compensation penalizes the customers of the network owner, and rewards the growth of non-facilities-based business strategies that confer no long-term benefit to consumers either in technological innovation or choice of facilities. Such business plans may offer something new in the way a service is packaged, but they don't contribute to the long-term health of our national telecommunications infrastructure. Putting aside the long-term viability of one-directional traffic plans, CenturyTel fails to see what value such plans add for consumers.

In the past, when the FCC wanted to encourage innovative use of common facilities (such as by independent long-distance carriers), the Commission imposed clear rules of access, but permitted the ILEC to recover its costs, partly from end-users and partly from the other carriers, who benefit from ubiquitous access to end-users. In a bill-and-keep environment, each carrier will try to recover its costs from a shrinking population of customers while competing carriers are trying to shift their own costs as much as possible to other carriers. In this game of "hot potato" the costs of running a network have to land somewhere, and the Commission seems to be saying they should land in the lap of the end-user who can least afford them.

a. The Commission incorrectly assumes that customers receiving a call stand to benefit equally with the calling party, and can control whether they receive or do not receive any particular call just as easily as the calling party controls whether to make the call.

The Commission is wrong in assuming that the called party and calling party benefit equally from each use of the network. CenturyTel agrees that all Americans benefit from the universal availability of service – "network externalities" increase the value to every user on the network when the network includes as many users as possible.[36] The ability to reach another

[36] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of*

user on the network, however, should not give a user the right to foist costs onto other users. Unwanted telemarketing faxes, "spam" e-mail traffic, and other "innovations" of the competitive market have proven in dramatic fashion how easy it is for senders to generate unwanted and even harassing communications, over-crowding network facilities and increasing costs to the recipient in the process. Despite the development of Caller ID and "do not call" and "do not fax" lists cited by the Commission, most end-users suffer from the proliferation of such unwanted communications – why should they be required to incur additional costs just to avoid unwanted use of the network to which they pay to be connected?[37]

b. The Commission incorrectly assumes that the best way to reduce enforcement costs is to go to "bill-and-keep" where there will be no confusing distinctions between different types of traffic.

The distinctions between reciprocal compensation and access charges, and differences in interstate and intrastate access rates, evolved for reasons that made sense at the time they were made. Each decision had a rational basis. Now the Commission finds it is facing a high number of inter-carrier disputes and seeks simplicity in the inter-carrier rules.[38]

CenturyTel agrees that enforcing inter-carrier compensation rights is time-consuming and costly. CenturyTel believes there are certain actions that the Commission could

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1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, 18 FCC Rcd 16978, n.253 (2003) ("In telecommunications networks, network externalities refer to the greater value of a network in which all users can communicate with all other users").

[37] The Commission states that because end-users are paying for Caller ID and other devices and services intended to limit the receipt of unwanted communications, "these customers benefit from receiving calls, and indeed benefit more from receiving some types of calls than others." *Further Notice* at para. 25. Using this logic, because taxpayers have been paying sales taxes, they clearly enjoy doing so, and therefore more items should be taxed! If customers have the limited ability to block some unwanted traffic today, largely at their own expense, it does not follow that they should be bombarded with more traffic, entirely at their own expense.

[38] The Commission has not actually adjudicated many of these disputes, but rather directed carriers to take these matters to the federal courts. *See supra* note 7.

take now – short of eliminating inter-carrier compensation altogether – that could simplify the process. However, any set of rules the Commission adopts will require enforcement. Even under "bill-and-keep" there will be disputes over rights of interconnection, transiting, and cost-recovery, while distinctions between different service providers (such as between carriers and ISPs) will remain. Thus, the FCC's enforcement role will remain as important as ever.

The solution is not to jettison a rational pricing system altogether, but to establish rules with as much clarity as possible at the outset, and resolve disputes promptly as they arrive. Leaving enforcement to the congested federal court system, however, is inefficient, costly, and likely to result in a hodge-podge of inconsistent interpretations of the Act and the Commission's rules. Under any regime the Commission adopts, it should provide for complaints to be resolved quickly and decisively pursuant to Section 208 of the Communications Act.

c. The Commission incorrectly concludes that changes in telecommunications infrastructure and the marketplace dictate against usage-sensitive pricing, on the theory that such pricing distorts the competitive process.

In arguing this thesis, the Commission seems to draw mainly on three assumptions: (i) because the cost of completing any single call is very small, the cost of completing a very large number of calls also must be *de minimis*;[39] (ii) only traffic-sensitive costs should be recoverable through inter-carrier compensation;[40] and (iii) "average cost pricing" discourages competition.[41] There is little, if any, support in the record or the *Further Notice* for these assumptions, however.

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[39] *See Further Notice* at para. 23.

[40] *See id.* at para. 66.

[41] *See id.* at para. 16.

CenturyTel has experienced first-hand where companies certificated as CLECs but offering no local exchange or exchange access service to the public obtain access to CenturyTel inter-office trunks at no charge (under the pretense that the traffic is local and not subject to originating access charges, despite the fact that it is terminated outside the local exchange). These so-called CLECs have used "virtual NXX" numbers to overload inter-exchange trunks with one-way ISP-bound traffic, causing CenturyTel to incur the cost of adding trunks or risk interruption of service to legitimate inter-exchange customers.[42] While the cost of transporting any minute of that ISP-bound traffic was no doubt very small, there is a considerable cost to CenturyTel of transporting the gigantic volumes of traffic generated by such "free" access, and no clear cost-recovery mechanism. Furthermore, transport distances are quite lengthy and infrastructure is expensive to deploy in the rural markets CenturyTel serves. If CenturyTel does not invest in additional facilities to handle the increased traffic, CenturyTel customers would suffer, and so CenturyTel's investors (not the customer nor the universal service fund) pick up part of the cost of its competitors' operations.

The Commission states that inter-carrier transport and termination of traffic results in no traffic-sensitive costs. The current rate structure, imposed by law, requires CenturyTel and other ILECs to recover the transport costs just described on a traffic-sensitive basis. Is it fair to ask CenturyTel investors to bear the construction of additional trunks to handle the massive volume increases generated by ISPs and the so-called CLECs who serve their dial-up traffic? Policies such as that could quickly dampen investor interest in network investment.

[42] *See supra* note 4 (citing CenturyTel *ex parte* letters to the Commission discussing Virtual NXX abuses); Reply Comments of CenturyTel of San Marcos, Inc., WC Docket No. 04-6 (Apr. 23, 2004) (responding to claims of ASAP Paging, that CenturyTel should be required to transport traffic outside of CenturyTel's service territory for ASAP customers at no charge).

To the extent that there are non-traffic sensitive costs associated with interconnection – such as port charges, connection charges, and other one-time or flat monthly recurring costs, the Commission should permit their recovery through clear national rules. Rather than remove such charges, CenturyTel believes that such charges could be an integral part of simplifying inter-carrier compensation, while maintaining revenue neutrality.[43] However, there remain aspects of network usage that are traffic sensitive, and these, too, need to be recovered by network operators such as the ILECs.[44]

The Commission singles out "average cost pricing" which historically was the access charge ratemaking methodology for rate-of-return ILECs. The *Further Notice* argues that this rate-setting methodology distorts competition by permitting ILECs to recover a portion of their costs from carriers whose customers have selected competing networks.[45] To the extent the ILEC imposes any charge at all on another carrier, however, it is because the other carrier does not serve both customers on the call – the ILEC must serve one of the customers or it would not be imposing any charge on another carrier. Thus, the paying carrier is compensating the ILEC for a portion of the cost of gaining access over that part of the ILEC's network that the ILEC customer has chosen to use.

[43] Universal Telecommunications Freedom (UTF) Plan, May 9, 2005 at 1 ("Frontier Plan") (endorsing port charges as a major part of reform), attached to Letter from Alex J. Harris, Vice President-Regulatory, Frontier, to Commissioner Kevin Martin *et al.*, CC Docket No. 01-92 (filed May 9, 2005).

[44] CenturyTel describes below some rational changes that could be made to today's traffic-sensitive pricing that would reduce arbitrage without drastically reducing ILEC stability. *See infra* Section III.B.3.

[45] *See Further Notice* at para. 16.

d. Competitive neutrality demands that the "equal access" rules sunset.

The *Further Notice* overlooks the failure of regulatory systems to keep up with competitive developments. The ILEC is the only carrier in a multi-party calling path that cannot offer its services to its customers or potential customers without also promoting the availability of its competitors' services.[46] Customers have ceased distinguishing between local and long-distance calls when they buy a calling plan from a CMRS carrier or cable telephony or VOIP provider. While CLECs in theory are subject to equal access rules, in practice only the ILEC is still selling consumers separate local and long-distance rate plans. Equal access rules have the ability to distort competition far more directly than inter-carrier charges that are rationally related to network usage. For this reason, CenturyTel supports elimination of equal access obligations for all carriers.[47]

Equal access was created to ensure that all customers could elect the *long-distance* carrier of their choice, distinguishing their inter-exchange carrier from their monopoly local exchange carrier, which generally did not offer nationwide long-distance service.[48] Put simply, the rule helped fledgling long-distance carriers such as Sprint and MCI gain market share. It should be obvious that the factual premises for equal access no longer are present. In addition to pervasive competition in the long-distance market, customers now have a choice of

[46] *Investigation of Access and Divestiture Related Tariffs; Allocation Plan Waivers and Tariffs*, 101 F.C.C.2d 935, at para. 950 (1985) (implementing "equal access" requirements on the Bell Operating Companies and Independent Telephone Companies); 47 U.S.C. § 251(g) (continuing existing equal access obligations until the Commission explicitly supersedes those restrictions); *id.* § 332(c)(8) (exempting CMRS carriers from equal access requirements, unless the Commission finds that imposing such requirements would serve the public interest).

[47] NARUC appears to agree that equal access makes no sense where originating access charges are eliminated. NARUC March 18, 2005, App. C, p. 3.

[48] Peter W. Huber, *et al.*, FEDERAL TELECOMMUNICATIONS LAW, Second Ed. 9.4.4.1 (1999).

local provider. CLECs, CMRS providers, cable television system operators offering high-speed broadband access, satellite providers, and independent VOIP providers using the ILEC's own DSL platform, all compete with the ILEC for the customer's local exchange *and interexchange* business. Each of these competitors offers the customer not "local" or "long-distance" service but ubiquitous telecommunications – voice and data, and in some cases video, too. And each offers those services as a package designed to meet customer demand, not separated into services the customer no longer finds relevant. *Only* the ILEC must offer local dial-tone service separately from long-distance, wireless and other services. *Only* the ILEC must offer the customer a choice of carriers – it is not permitted to offer only its own inter-exchange telecommunications services but also must offer those of its competitors. It is time to recognize the reality of the competitive marketplace. In 2004 the Commission declined to mandate equal access obligations for CMRS carriers.[49] It is time to do the same for ILECs.

3. The Commission Should Permit Carriers In Rural Markets to Recover a Meaningful Portion of Their Costs from Inter-Carrier Charges

CenturyTel supports sensible reform of the current inter-carrier compensation framework to alleviate some of the unnecessary complexities that have accumulated in the system. The *Further Notice* does not make a compelling case, however, for eliminating inter-carrier charges entirely, and forcing carriers in high-cost markets to recover all their costs from end-user charges, or a combination of end-user and federal support payments. The Commission should strive for uniformity and simplicity, but that does *not* mean that the Commission should throw out altogether the requirement that carriers pay for the use of each others' networks. A

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[49] *Federal State Joint-Board on Universal Service,* Report and Order, CC Docket No. 96-45, FCC 05-46, para. 35 (rel. Mar. 17, 2005) ("*CETC Standards Order*").

meaningful third revenue stream, in reasonable proportion with universal service and end-user charges, is needed. The continued payment of inter-carrier compensation will both reduce arbitrage and stabilize the economics of serving high-cost areas.

Proposals to eliminate inter-carrier compensation altogether, or to go to uniform nationwide rates that fail to reflect cost characteristics of different study areas, put consumer welfare at risk. As explained below, reliance solely on universal service support and end-user rates would be unsustainable, especially in rural areas. Inter-carrier compensation, tailored to the cost characteristics of the area served, is needed to ensure proper cost recovery and to create incentives for future investment in our national telecommunications infrastructure.

a. CenturyTel supports eliminating the difference between access charges and reciprocal compensation, provided reasonable rates are established and all telecommunications traffic is included.

CenturyTel would support simplifying inter-carrier payments by creating a single rate structure for access charges and reciprocal compensation. Today, ILECs and CLECs charge both originating and terminating access on a shrinking number of access minutes, while all carriers charge terminating (only) charges for transport and termination of local telecommunications traffic. CenturyTel could support phasing out origination charges, and moving to a terminating-only rate for all types of traffic, over a period of six to eight years, provided that this termination rate affords a sufficient counterbalance to end-user rates and universal service, and equal access requirements are removed.[50]

The terminating access charges proposed by the ICF and NARUC would amount to less than half of the compensation required to avoid end-user rate shock and increased reliance

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[50] *See, e.g.*, ICF Plan at 6 (phasing out origination charges; CenturyTel does not agree, however, with the ICF Plan's further move to phasing out termination charges); NARUC Principles at 2 (suggesting that only the carrier handing off traffic would pay for use of the other carrier's network).

on universal service support.[51] We believe the terminating transport rate proposed by the ICF should be doubled in order to afford CRTCs a reasonable third revenue stream. If the Commission adopts a terminating-only rate structure for inter-carrier compensation, CenturyTel advocates that the rate be sufficient so rural carriers such as CenturyTel can recover 50 percent of their total current inter-carrier compensation revenues from the termination charge alone. Under such an approach, the rate structure could be considerably simplified but rates could still reflect the cost differences of serving different areas.

Any system that provides a one-way revenue stream, compensating only the terminating carrier, would create new opportunities for arbitrage. FCC rules requiring reciprocal compensation only for termination, for example, caused swarms of sham CLECs to form just for the purpose of collecting reciprocal compensation on ISP-bound calls. These so-called carriers provide no "exchange" services nor "carriage" as such, but merely exist as a conduit for utterly unjustified payments from originating carriers to the true beneficiaries of the FCC's reciprocal compensation policies, the ISPs. The Commission should consider carefully the consequences of moving any aspect of inter-carrier compensation to zero or to a level that will invite arbitrage.

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[51] ICF Plan at 38 (proposing that the weighted average terminating transport rates across a holding company may not exceed $0.0095); May 18 NARUC Proposal at 4, 13 (proposing a range of per-minute termination rates between $0.001 for wire centers of greater than 5,000 lines and $0.02 for wire centers of fewer than 500 lines, and a terminating transport rate in the range of $0.0095 to $0.019). CenturyTel supports the concept that CRTCs, as defined in the ICF plan, should be permitted to charge for access to their networks, including the cost of transporting traffic across their service areas. Terminating access revenues would help keep both end-user rates and support for CRTCs at reasonable levels, while still permitting connecting carriers to build or buy alternative facilities, such as special access or CLEC-provided fiber, to CRTC end-offices. *See* ICF Plan at 20-21. Such a rule can be expected to result in the proliferation of network facilities where it is efficient to construct additional facilities, and use of the CRTC network where the market does not justify additional carrier investment. This economically efficient result would promote consumer benefits as well, provided the rate is adequate.

Alternatively, if the Commission determined to keep origination charges in order to avoid putting undue pressure on the size of the universal service fund and end-user rates, there still could be room for improvement over the current system. CenturyTel would support a unified rate for all types of traffic, such as that proposed by the Rural Alliance**,** based on historic costs in each study area.[52] This would greatly simplify inter-carrier compensation, and lower the highest charges paid by inter-exchange carriers, without doing violence to cost-recovery principles.

b. CenturyTel supports unifying access charges for interstate and intrastate traffic, over a reasonable transition, provided the resulting rate is adequate and specific to the area served.

CenturyTel also endorses the concept, raised in numerous plans, to close the gap between interstate and intrastate charges over time.[53] The three-year, four-step transition timetable set forth in the ICF plan seems an appropriate schedule for unifying disparate state and federal rates. As for the rate levels, however, they must continue to provide a meaningful third revenue stream, not be reduced to a token amount such as the ICF proposes for terminating access for covered rural telephone companies (CRTCs).[54] These rates could be set based on current ILEC rates, or rate bands could be created that reflect relative cost characteristics based on such factors as line density and loop length.[55]

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[52] ARIC Plan at 37-46. NARUC also supports an alternative of retaining originating access charges on switched traffic. *See* May 18 NARUC Proposal at 3.

[53] *See* ICF Plan at 32; ARIC Plan at 37; EPG Plan at 6; Frontier Plan at 8-10.

[54] ICF Plan at 38.

[55] NARUC incorporates similar concepts in their proposed rate structure, although CenturyTel does not think the actual rate levels proposed by NARUC are adequate. *See* May 18 NARUC Proposal at 4.

c. Establishing sufficient inter-carrier compensation will help alleviate pressure on high-cost funding mechanisms.

In every proposal that mentions the possibility of revenue loss to rural carriers as a result of changes to inter-carrier compensation, including the Commission's own proposal, the concern also is raised that federal support programs such as the universal service rural high-cost fund could grow "too big." For a variety of reasons, too much reliance on federal support is an unwanted result. For those who are net contributors, this type of fund adds to their costs and must be passed through to consumers. For those who are net recipients, this funding is unstable. Already the capping of the rural high-cost fund has cost rural carriers more than $960 million in support over the past three years.[56] This funding year will be the first ever in which the total high-cost support paid to all rural carriers *decreased*. The funding is decreasing not because costs are decreasing,[57] but because the fund is capped and indexed only to inflation and line

[56] Based on publicly available NECA data, CenturyTel calculates that in the past three years, rural LECs have foregone approximately $199 million, $303 million and $465 million, respectively, in federal high-cost support justified by their permitted cost base, which they did not receive solely because of the operation of the cap on the overall growth of the fund. Evidently the gap can be expected not only to continue but to widen each year.

For this reason, CenturyTel supports the ICF's proposal to remove the cap on the rural high-cost fund. Uncapping the fund, and re-sizing it to reflect where funding would have been but for the operation of the cap, is a revenue-neutral measure to ensure that CRTCs have the ability to receive the funding they previously were receiving, provided their costs justify that funding, in order to keep end-user rates affordable. *See* ICF Plan at 79.

The ICF's proposed amendments to the "safety valve" similarly were designed merely to help keep CRTCs whole, by permitting them to recover more of their post-acquisition investment, but they do not actually assure that CRTCs will be made whole – CRTCs still assume risk that they will not recover all the their new investment following an acquisition. *See* ICF Plan at 81 (providing for only partial recovery of costs through universal service support). The goal of revenue neutrality is to provide an opportunity for cost recovery at previous levels, so carriers are not harmed by the proposed reforms.

[57] While some costs, such as the cost of fiber and switching, may have declined over the past few years, other costs, such as labor, energy, and other overheads, have steadily increased. Further, the market demands that advanced telecommunications capability be deployed

growth; in the past four years inflation has been low and ILEC lines have decreased.[58] In contrast, ILEC costs per line have been increasing due to the high costs of serving rural areas as the COLR, but the foregone support cannot be recovered by the ILEC, other than by requesting permission from state regulators to raise end-user rates. Thus, the purpose of the high-cost fund, to help keep end-user rates affordable,[59] already has been compromised.[60] Further growth in federal support programs will inevitably lead to additional pressure to curtail funding.[61]

For a COLR, reliance solely on end-user rates also is insufficient in a competitive environment. Even if rates were set at affordable levels, no entity would willingly undertake the investment and maintenance responsibilities of the COLR knowing competitors could heap on additional network costs without any recourse by the COLR. If access to the COLR's network is free, carriers relying predominantly on end-user charges will see revenues steadily decline and costs increase in high-cost and low-revenue areas. Investors may well abandon these markets and customers will be left with inferior choices for service.

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even in the most rural markets, and the cost of deploying any new technology will always be higher where loop lengths are longest and population density is lowest.

[58] Industry Analysis and Technology Division, Wireline Competition Bureau *Trends in Telephone Service*, at Table 7.1 (May 2004). CenturyTel has lost lines each year since 2001, and projects that it will have lost over five percent of access lines from the period December 2001 through December 2004.

[59] 47 U.S.C. 254(b)(1) (stating that "[q]uality services should be available at just, reasonable, and affordable rates").

[60] Universal service payments being made available to competitors who lack the same costs as the ILEC, and lack COLR responsibilities, just adds to the pressure investors feel. *See, e.g.*, Reply Comments of CenturyTel, CC Docket No. 96-45 (filed September 21, 2004) (discussing the problems with providing CETCs with funding equal to that which the COLR is eligible when the CETC does not have equal service obligations); *CETC Standards Order* at para. 1 (adopting additional criteria for CETC designations).

[61] Representative Joe Barton (R-Texas), Chairman of the House Committee on Energy & Commerce, recently stated of the E-rate program: "If I had to vote today, I would vote to abolish it--period. . . . If I have the votes to kill it, I will. If I can't do either of those things, then I will so underfund it so that it ceases to exist." Heather Forsgren Weaver, *Senate, House Leaders Spar on E-rate*, RCR Wireless News (April 18, 2005).

In order to preserve and advance universal service, the FCC is obligated by statute to ensure rural carriers have the ability to maintain and upgrade their networks and provide services to their customers.[62] Continued implementation of inter-carrier charges will both reduce dependence on federal support and promote stability for the carriers who serve high-cost, low-revenue areas – giving them a better incentive to remain in the market.

4. The "Additional Cost" of Exchanging Traffic With Another Carrier Is *Not* Zero

The Commission asks whether the "additional cost" standard of Section 252(d)(2) of the Act requires that reciprocal compensation pursuant to Section 251(b)(5) be provided at rates that recover no more than the short-run incremental cost of termination.[63] The Commission proposes to find that all inter-carrier traffic be exchanged pursuant to Section 251(b)(5) in the future. Thus, the Commission proposes to find that all inter-carrier traffic be exchanged at no more than the "additional cost of terminating such calls," which the Commission supposes to be zero.[64]

The *Further Notice* uses Section 252 as a blunt instrument to enforce its obvious desire to get to a zero-based "bill and keep" result. The Communications Act does not require that the Commission overlook actual costs incurred by a carrier as a result of allowing other

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[62] 47 U.S.C. §§ 254(b)(2), (b)(3), (b)(5), (b)(6), and (e) (requiring that rural consumers have access to advanced telecommunications capability, that support be sufficient, and that support be used to support the upgrading and maintenance of facilities to achieve these purposes; *id.* § 157 nt (requiring the Commission and state commissions to encourage the deployment of advanced telecommunications capability to all Americans). See also *Further Notice* at paras. 99-103.

[63] *Further Notice* at para. 64.

[64] *Id.* at para. 23 (stating that "it appears" that network costs are not caused by "usage of the network" and "calls into question . . . intercarrier compensation mechanisms based on per-minute charges").

carriers to use its network to originate or terminate their calls, or to interconnect for the purpose of exchanging traffic. In fact, the Act could not be read to do so.

The fact that Section 252(d) refers to "additional costs" is not as revealing as the Commission suggests. Within Section 252(d)(2) there are at least two formulations for a cost-based pricing standard for reciprocal compensation pursuant to Section 251(b)(5) – "costs associated with the *transport and termination* on each carrier's network facilities of calls that originate on the network facilities of the other carrier" in subsection (A)(i) and "a reasonable approximation of the *additional* costs of *terminating* such calls" in subsection (A)(ii) (emphasis added). Section 252(d)(1) contains yet another formulation of a cost-based pricing standard for interconnection pursuant to Section 251(c)(2) – "based on the cost…of providing interconnection…." None of these pricing standards provides much guidance, yet the Commission attempts to find meaning where there is no evidence that any was intended. The Commission, which abhors different prices for the same functionality, cannot plausibly suggest that the "transmission" of telecommunications under Section 251(b)(5) and 251(c)(2) were meant with any meaningful differentiation in mind.

In comparing Section 252(d)(2) to Section 252(d)(1), the Commission finds significance in the use of "additional costs" in the former and "cost" in the latter. However, it is clear that the very rudimentary pricing standards established in Sections 252(d)(1) and (2) are not to be read in isolation. For example, Section 252(d)(1) requires that rates for interconnection pursuant to Section 251(c)(2) be "non-discriminatory" while Section 252(d)(2) has no such requirement for reciprocal compensation rates. But that does not mean that ILECs may unreasonably discriminate in their provision of reciprocal compensation pursuant to Section 252(b)(5) – other provisions of the Act clearly prohibit unreasonable discrimination by all carriers. Therefore, the absence of the reference to a "reasonable profit" in Section 252(d)(2), while it is included in 252(d)(1), cannot be read to preclude carriers from earning a "reasonable profit" on reciprocal compensation. It would flout a hundred years of common carrier regulation to require carriers to forego a reasonable return on investment on any service offering.[65]

The most sensible reading of the "additional cost" standard set forth in Section 252(d)(2) also happens to be the most natural one: A standard which ensures rates for the transport and termination of traffic are just and reasonable, and not unreasonably discriminatory, based on the costs that directly relate to the functionality in question (*i.e.*, the transport and termination of another carrier's traffic). Since it is not reasonable to assume those costs are zero, the Commission must develop a range of cost-based rates reasonably designed to approximate the costs of transport and termination of other carriers' traffic. These rates should reasonably approximate the cost differences between areas with greater and lesser population density, routes with more and less traffic, and varying loop lengths.

C. Changes to Inter-Carrier Compensation and Universal Service Rules Must Be Competitively Neutral

Perhaps the most difficult aspect of the transition to inter-modal and intra-modal competition is developing regulatory policies that neither foreclose opportunities to compete nor give competitors a false stimulus. The Commission has had several false starts in setting policies for interconnection between ILECs and CLECs and access to ILEC networks on an unbundled basis. It now is accepted wisdom that giving overly generous access to ILEC networks did not create a robust CLEC sector but rather sent improper signals to the market, resulting in a

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[65] *See, e.g.*, Stuart N. Brotman, COMMUNICATIONS LAW AND PRACTICE 4.04[1][a] (1995) (citing *Board of Commissioners v. N.Y. Telephone Co.*, 271 U.S. 23, 31-32 (1926)).

spectacular bursting of the CLEC "bubble" when those signals were reinterpreted.[66] Similarly, the Commission's policies toward the designation and funding of competitive eligible telecommunications carriers (CETCs) have fluctuated, as states first did not know whether to designate CETCs, then did not appear to have any standards for certifying that the federal support they received was being used for purposes authorized by the statute.[67] In both cases, the Commission made similar errors: being overly generous to new entrants, despite economic signals that counseled the opposite, and at the same time overly restrictive of incumbents, who are forced to compete on economically irrational terms.

In the present docket, the Commission is poised to make comprehensive policy changes that will affect how carriers relate to each other as well as to their customers. The rule changes must not put any carrier at a significant disadvantage at the outset. If inter-carrier compensation and end-user charges are set appropriately, and support programs are administered in a way that is true to their purpose, then the Commission may simply allow the market to function, confident that the public interest will be served. This is an opportunity to set a course

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[66] *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers*, 18 FCC Rcd 18945 (2003)*; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), *corrected by* Errata, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) (*USTA II)*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3701 (1999) (*UNE Remand Order*), *vacated and remanded in part, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA I*); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15846-50, paras. 679-89 (1996) (*Local Competition Order*)**,** *aff'd in part and reversed in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *modified by, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (vacating unbundling rules at issue).

[67] *See ETC Standards Order*; *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, at para. 2 (rel. Feb. 27, 2004).

that is far more competitively neutral and market-oriented than has ever existed in this country to date.

1. The Commission Should Provide Pricing Flexibility And Incentive Regulation For Smaller Carriers, Not Just For The Price Cap LECS

In exploring the current state of rate regulation, the record reveals significant divergence in the degree of pricing flexibility afforded to different carriers. For example, carriers that compete directly with each other may be subject to very different restrictions governing SLCs, transport and special access charges.[68] CenturyTel has proposed changes to the FCC's rules to give non-price cap carriers opportunities for pricing flexibility and incentive regulation similar to that enjoyed by the larger carriers under price caps.[69] The Commission has previously acknowledged that pricing flexibility is a pro-competitive first step toward allowing market forces to govern ILEC pricing. The *Further Notice* suggests that competitive neutrality is one of the Commission's goals in revamping federal pricing regulations.[70] The Commission

[68] 47 C.F.R. Part 69 (setting forth disparate treatment for non-price cap LECs and price-cap LECs); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, 14 FCC Rcd 14221 (granting pricing flexibility to price cap LECs) (1999); *Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report And Order And Further Notice Of Proposed Rulemaking In Cc Docket No. 00-256, Fifteenth Report And Order In Cc Docket No. 96-45, And Report And Order, 16 FCC Rcd 19613, at paras. 241-253 (considering pricing flexibility for rate-of-return carriers) (2001). *See also* ICF Plan, at 21-23 (proposing to give price cap carriers greater flexibility on SLCs and transport).

[69] The FCC Should Permit Rate-of-Return Carriers to Elect Price Cap Regulation for Interstate Access Charges on a Study Area Basis and Eliminate the "All or Nothing Rules" ("CenturyTel Incentive Plan") (Dec. 23, 2002), attached to Letter from Karen Brinkmann, Counsel to CenturyTel, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 98-77, 98-156, 00-256 (filed Dec. 23, 2005).

[70] *Further Notice* at ¶ 33 ("any new intercarrier compensation approach must be competitively and technologically neutral").

therefore should give all carriers equal flexibility on prices, so rate regulations will be more competitively neutral and all ILECs will have the ability to respond to market forces.

2. The Distribution Of Federal Support That Is Intended To Replace Foregone Access Revenues As A Result Of This Reform Proceeding Should Be Competitively Neutral And Revenue-Neutral

"Competitively neutral" clearly is in the eye of the beholder. CenturyTel has urged the Commission to consider this proceeding's impact from the end-user's perspective. If this proceeding is to benefit consumers, it must do more than shift cost recovery from the most profitable end-users to less-profitable end users.[71] It must not leave the COLR (especially in rural areas) in an impossible position facing increased competition and increased traffic flowing over its network but decreased revenues and higher end-user rates. The Commission should ensure federal funding is targeted to carriers whose inter-carrier revenues are directly impacted by the Commission's reforms, not doled out to new entrants without justification. In this way, the support rules will be competitively neutral from the standpoint of the public interest.

a. Eligibility for support should be restricted to carriers directly impacted by the revenue shift in this reform proceeding.

Carriers that are not foregoing access revenue as a result of inter-carrier compensation reform should not receive any new support. CRTCs would face unique challenges in serving high-cost markets without access revenues. Making them even more dependent on high-cost support than they are today is going to be difficult to begin with, but making that support available to competitors who do not have the same COLR responsibilities makes no economic sense. CenturyTel believes that the only approach that is revenue-neutral and competitively neutral is to restrict eligibility for the new support created to replace lost access

[71] *See supra* Section III.A.

revenues under the FCC's new rules to carriers who actually are lawfully charging access today – *i.e.*, ILECs and some CLECs who truly provide exchange access service.

This basic notion of revenue neutrality already has been endorsed by proposals in this proceeding.[72] Contrary to the ICF's proposal, CenturyTel believes this revenue-neutrality principle should apply in all markets, rural and urban, so carriers who are not foregoing access charges do not receive an unjustified windfall and competition is not distorted.

b. Support for the COLR must be sufficient, specific and predictable.

The Commission also should lift the cap on the existing high-cost fund, as recommended by Frontier and the ICF. In the past three years, rural ILECs have lost over $960 million in needed high-cost support because of the operation of the cap.[73] The cap was put in place during a period of growth in the industry.[74] In a period of line growth, the overall fund grows in proportion to lines added and to keep step with inflation, but not due to other increases in costs of the carriers; this provides an incentive for each carrier to control its costs.[75] However, the past four years have been characterized by low inflation and line loss, for CenturyTel and for ILECs nationwide.[76] Because support is administered as a multiple of average cost-per-line

[72] *See, e.g.,* EPG Plan at 21; Joint Statement of the Alliance for Rational Intercarrier Compensation and the Extended Portland Group, attached to Letter from Glenn H. Brown and Ken Pfister to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 01-92 (Dec. 8, 2004).

[73] *See supra* note 56.

[74] *See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 9 FCC Rcd 303 (1993); *Federal-State Joint Board on Universal Service*, 11 FCC Rcd 7920 (1996); *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 5318, at para. 27 (1997); *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 11244, at para. 13 (2001).

[75] 47 C.F.R. §54.307.

[76] Industry Analysis and Technology Division, Wireline Competition Bureau *Trends in Telephone Service*, at Table 7.1 (May 2004).

across each study area, as the number of lines subscribed to CenturyTel declines, support declines, even though very few of the costs in that study area are declining. This type of decline was never anticipated when the cap was put in place.

Before taking dramatic steps to reform inter-carrier compensation and putting new pressures on end-user rates, the Commission should lift the cap and restore support to where it would have been, so customers are assured that rates will remain affordable going into the new regime envisioned by the Commission. CenturyTel supports Frontier's proposal to reset the current fund at levels appropriate to the national average cost per loop.[77] We also support Frontier's proposal to freeze rural high-cost support on a per-line basis following the resizing of the fund.[78]

CenturyTel further agrees that the purpose of such support is ensuring a COLR will be ready, willing and able to provide service on request to any resident in the area, and therefore the criteria for eligibility ought to be identical – not more lenient for CETCs, as is true in most states today.[79] Ultimately, there can be only one COLR in any area. Therefore, CenturyTel urges the Commission to stop funding CETCs who provide only complimentary or inferior services, and instead fully fund a single COLR who will ensure rates are affordable and services are comparable to those available in non-rural areas.

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[77] Frontier Plan at 1.

[78] *Id*.

[79] *Id.* at 14.

IV. CENTURYTEL SUPPORTS DEVELOPMENT OF "NETWORK ARCHITECTURE" AND INTERCONNECTION RULES THAT RECOGNIZE THE UNIQUE CHALLENGES IN SERVING RURAL AMERICA

A. Some Proposed "Network Architecture" Rules Reflect The Unique Covered Rural Telephone Company (CRTC) Service Territories

None of the proposals made in this proceeding so far resolves all the issues arising out of inter-carrier interconnection and compensation, but the ICF seems to have made the most thorough exploration of concepts related to how and where carriers should interconnect with each other for the purpose of exchanging traffic, and where the related financial responsibilities should begin and end. CenturyTel supports many of these concepts. In particular, the distinction between CRTCs and other carriers,[80] the network "edge" definitions,[81] the default interconnection rules,[82] and the mandatory transiting obligations,[83] taken as a package, would help ensure that all traffic can be exchanged pursuant to clear instructions, eliminating many current and potential disputes and inequities among providers.

The ICF network architecture concepts also would go a long way toward ensuring that CRTCs would not bear excessive costs for exchanging traffic with non-CRTCs, by *not* requiring the CRTC to transport traffic beyond the boundaries of its contiguous service territory.[84] The ICF plan thus solves one of the problems of the Commission's "COBAK" proposal.[85] The basic premise with the ICF's network architecture is sound and consistent with

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[80] *See generally* ICF Plan at 19.

[81] *See id.* 4-6.

[82] *See generally id.* at 19-25.

[83] *See generally id.* at 25-31.

[84] *Id.* at 4.

[85] *Initial Notice* at para. 23.

FCC precedent – no carrier should be required to build facilities outside its own service area for the convenience of another carrier seeking to interconnect with it.[86]

The ICF plan also contains detailed rules on points-of-interconnection (POIs) and defined "edges" so that type, number and location of mandatory POIs can be known in advance. CenturyTel supports the distinction among hierarchical carriers, non-hierarchical carriers and CRTCs. Non-CRTCs with traffic originating outside a terminating carrier's network service area should be required to establish a POI in each terminating carrier's service area, and in each non-contiguous portion of a CRTC's service area. In this way, terminating carriers will avoid some of the cost of receiving traffic from originating carriers, who in large measure control the cost of the transmission, and who benefit from the ability to terminate their traffic to end-users on other carriers' networks.[87] Moreover, CRTCs must maintain networks that generally are higher cost, so placing a slightly greater burden on the non-CRTC for recovery of network costs associated with exchanging traffic with a CRTC, and particularly those costs arising outside the CRTC's service territory, is consistent with universal service policy. In non-rural markets, carriers'

[86] The Commission reached the same conclusion in developing UNE rules, holding that an ILEC's obligation to provide a network element on an unbundled basis (at regulated TELRIC rates) is distinct from, and does *not* encompass, an obligation to substantially modify its network or construct new facilities for use by the requesting carrier. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, paras. 636, 645-48 (2003), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[87] CenturyTel disagrees with the Commission's assertion (*Further Notice* at paras. 25-26) that the called party has as much control over the call, and benefits just as much, as the calling party. Originating parties still have the ability to send unwanted traffic via a variety of means, and this problem is probably most acute in rural areas where SS7 functionality is not yet universal. In the IP-based world, unwanted traffic already is wreaking havoc with networks, as the numerous lawsuits and legislative efforts to curtail "spam" can attest.

incentives to choose mutually beneficial POIs are likely to be more balanced than in rural markets. CenturyTel has had first-hand experience with such abuse.[88]

The concept of encouraging parties to interconnect at a reasonable number of "edges" also make sense. When a non-CRTC terminates traffic to a CRTC, the non-CRTC should have the financial responsibility to get traffic to the CRTC's end-office, but the non-CRTC would not be obligated to construct facilities in the CRTC's service territory. On traffic bound for a CRTC's end-users, the non-CRTC would have the option to take the traffic all the way to the CRTC's end-office, or just to a "mid-span fiber meet point" and pay the CRTC to transport for the remaining distance to the end-office. On traffic originating on the CRTC's network, the CRTC should take the traffic to a meet point at the edge of its network, where it can hand the traffic off to the non-CRTC terminating carrier. CenturyTel supports these aspects of the ICF plan and encourages the Commission to incorporate these concepts into its inter-carrier compensation framework.

B. Most Plans Fail to Anticipate Major Opportunities for Arbitrage, and to Provide for Changes In How Carriers Will Operate In the Future

While CenturyTel believes many of the plans submitted in *ex parte* filings in this docket explore the questions of how and where traffic should be exchanged and networks should interconnect, all are lacking in significant respects. The following are some of the major issues that have yet to be adequately addressed in any proposal for inter-carrier compensation reform:

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[88] The Commission correctly identifies intraMTA and interMTA CMRS-LEC traffic as raising unique problems of transport cost recovery under the current rules. *Further Notice* at paras. 134-138. Similar issues are raised by the use of ILEC networks by CLECs and others who employ "virtual NXX" schemes by assigning local numbers to CLEC customers not physically located with the ILEC local calling area. This creates inter-exchange traffic that the CLEC seeks to exchange as "local," thereby avoiding access charges it normally would incur for the use of the ILEC's network in this manner. *See supra* note 4.

Any plan must address the need for call origination information to be forwarded from carrier to carrier, in order for charges to be properly assessed, and make possible enforcement of these requirements. The problem of "phantom traffic" is a serious *and growing* one.[89] If carriers are expected to recoup part of their costs based on the traffic they receive from other carriers, even on an interim basis, the rules must support their ability to do so. The ICF plan touches on this in discussing the obligations of originating carriers vis-à-vis transiting carriers, but places no comparable obligation on transiting carriers. In fact, the ICF tries to absolve transiting carriers of all responsibility, requiring terminating carriers to seek out originating carriers with whom they have no direct relationship.[90] The enforcement problems under this scheme are easy to anticipate.

Future inter-carrier rules also must anticipate schemes designed to take unfair advantage, and prohibit intentional "arbitrage" of other parties' networks. For example, where traffic is substantially out of balance (*e.g.,* by more than a 2-to-1 ratio), history tells us that one of the parties probably is not a true public telecommunications carrier.[91] The FCC's rules therefore should contain limits on inter-carrier compensation to prevent arbitrage schemes designed to profit from traffic that is significantly out of balance.

In addition, the Commission should clarify whether every carrier has an obligation to permit other carriers to transit its network (*i.e.*, to receive and forward traffic that originates on another party's network for termination on a third party's network). If transiting is not a right of all telecommunications carriers, and an obligation of all carriers, then the ability to

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[89] *See supra* Section II.

[90] ICF Plan at 25-28.

[91] *Implementation of the Local Competition Provisions in the Telecommunications Act*, *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, at paras. 2, 4-6 (2001).

provide ubiquitous service will be undermined, and the national "network of networks" may revert to one or two large network operators with market power, and a variety of small, non-interconnected networks with limited service, that characterized the U.S. telephone system of the early 1900s.[92] On the other hand, the right to transit should be accompanied by responsibilities, including the proper labeling and routing of traffic, described above, and the duty to reciprocate.

Finally, there is no clear proposal in the record for exchange of IP-to-IP traffic. The ARIC Plan discusses IP traffic as telecommunications traffic and advocates a flat-rated cost recovery mechanism, but does not specify rates.[93] As all networks, including those operated by ILECs, CLECs, and CMRS carriers, incorporate more and more IP-based technology, and perhaps convert ultimately to a "pure" IP format, the inapplicability of the ICF plan to IP-to-IP traffic seems problematic to say the least.

V. INTER-CARRIER COMPENSATION REFORM SHOULD BE INCREMENTAL – FURTHER STUDY IS NEEDED TO ENSURE THAT SERVICE TO RURAL AMERICA IS NOT PUT IN JEOPARDY

CenturyTel urges the Commission to proceed in addressing the foundational issues it can readily address as it moves toward inter-carrier compensation reform. As a rule, the Commission has had greater success in preventing unintended consequences when it has moved incrementally rather than made sweeping changes. Incremental change can be managed far more easily, rate shock to customers can be avoided, and investor expectations can be managed. CenturyTel has suggested herein a number of changes that could be adopted in the near-term, and expressed concern about a radical restructuring of inter-carrier compensation at this time. In

[92] *See* Thomas G. Krattenmaker, TELECOMMUNICATIONS LAW AND POLICY 350-51 (1998); Stuart N. Brotman, COMMUNICATIONS LAW AND PRACTICE 1.04[3][b] (1995).

[93] ARIC Plan at 97.

the following paragraphs CenturyTel suggests several subjects that merit further study by the Commission, which eventually could lead to meaningful improvements in the federal rules.

Whether an Increase in SLC Caps Will Cause Service to Become Unaffordable. Universal service is the paramount goal of the Communications Act. Without universal service, competition is irrelevant and technological innovation is incomplete. The Commission will have failed in its public interest mission if it adopts rules to promote competition and innovation but forces customers to drop necessary services. The *Further Notice* proposes a number of reforms likely to affect consumers in high-cost areas far more than others, and residential consumers far more than business consumers, for the reasons described above. CenturyTel advocates further study by the Commission to determine whether the increase of the SLC caps, such as the ICF and others have proposed, will cause consumers to drop service or forego advanced services, such as broadband, that contribute to economic development.

How "Bill-and-Keep" Would Affect Investment Incentives. Further, the Commission should not force carriers serving high-cost areas to rely on any single source of revenue – end-users, carriers, or support programs – or even two out of three. A two-legged stool is not a stable platform on which to base our national infrastructure. Moreover, each leg must represent a meaningful revenue source; reducing inter-carrier compensation to only a "token" part of the compensation framework will place too much burden on end-users and universal service support. The additional cost to a carrier of originating, terminating, and transiting traffic is *not* zero. The Commission should make any changes to current prices incremental, and evaluate over time how the revenue shift affects services to the most vulnerable customers. A transition of at least eight years should be the minimum. CenturyTel recommends that before any dramatic shift in these carriers' cost recovery is mandated, further study be done on the impact of a "bill and keep" regime on carrier investment incentives.

Whether Additional Deregulation is Necessary to Achieve a Functioning Market.

The Internet backbone presents a good model for how the market will sort itself out into appropriate tiers of payment (or non-payment) for services the market deems to be "like" services. However, although the Internet provides certain clues to the direction of the telecommunications marketplace, the Commission must recognize that Internet-style "peering" did not occur overnight, and does *not* involve indiscriminate "free" access to transit. In the Internet peering environment, only carriers with matched economic incentives agree to peer or exchange traffic on a no-charge basis – if a carrier has too much traffic in one direction, or too few end-users, for example, it will not be permitted to "peer" with the Tier One carriers.

Similar interconnection and "roaming" rules were worked out by the CMRS industry without FCC mandate. At first, carriers entered into roaming agreements cautiously, charging relatively high fees to ensure their costs were recovered. Over time, as the market became ever more competitive and the system of inter-carrier payments operated smoothly, roaming charges have dropped precipitously, and inter-carrier interconnection in the CMRS sector is routinely accomplished without regulatory involvement.

In contrast, ILECs have unique obligations that benefit consumers but also competitors. ILECs are not free to negotiate market-based solutions where it is in their economic interest to do so, or to charge market value for access to their networks. Before ordering ILECs to give away access to their networks for free, the Commission should take the steps outlined above, and consider whether further deregulation would permit operation of market forces.

Whether Separations, Accounting and Other ILEC Rules Should Be Modified To Reflect New Policies Governing Inter-Carrier Compensation. The FCC has proposed exerting a significant degree of jurisdiction over ILEC revenue recovery, but has not clearly articulated whether or how it will change separations or accounting rules in the future in light of the dramatically different regime under consideration. Further, it is not clear whether anything should remain of interstate earnings regulation in light of the rule changes proposed. In the Commission's deliberation over inter-carrier compensation, it should conduct a thorough review of its rules to determine which of the artifacts of dominant carrier regulation no longer make sense.

If the Commission truly is dedicated to resolving the problems of the current system, it must make an honest assessment of the improper incentives created under both the current rules and its proposals, and take a hard look at the past behavior and expected future behavior of any logical party to try to take advantage of such rules. The rules should support universal service, investment and innovation rather than creating increased opportunities for arbitrage and cream-skimming.

VI. CONCLUSION

For the reasons articulated above, CenturyTel advocates incremental change to inter-carrier compensation and related rules governing competition and federal support programs. The Commission should take immediate steps to shore up rural service *before* making dramatic changes to inter-carrier payments, to ensure against unintended consequences. Requiring truth-in-labeling of traffic, and requiring interconnection within each of a rural carrier's non-contiguous service areas, will greatly facilitate proper allocation of financial responsibilities. Removing the cap on the high-cost support fund, and properly targeting new support to the COLR, will help ensure universal service despite the changes in revenue recovery for rural ILECs. Further study is needed before significant new burdens are placed on subscribers and the network. If the Commission proceeds cautiously, through a logical series of steps, reform can be orchestrated in a way that will preserve the ubiquitous networks we enjoy today, and create better incentives for future investment in our national telecommunications infrastructure.

Respectfully submitted,

/s/

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